



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

July 28, 2016

Regulatory Branch

Lummi Natural Resources Department
Mr. Merle Jefferson
2665 Kwina Road
Bellingham, Washington 98226

Reference: NWS-2016-493
Lummi Nation

Dear Mr. Jefferson:

We have reviewed your application to excavate and place fill in waters of the U.S. for restoration activities the Middle Fork Nooksack River near Deming, Whatcom County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities (Federal Register February 21, 2012, Vol. 77, No. 34), authorizes Phase 1 of your proposed Middle Fork Nooksack River Habitat Restoration Project as depicted on the enclosed drawings dated May 31, 2016. In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 27, Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) 2008 Fish Passage and Restoration Programmatic Consultation (U.S. Fish and Wildlife Service Reference No. 1341-2008-FWS- #F-0209), you must comply with the conditions included in the Specific Project Information Form dated June 7, 2016 and the enclosed electronic approval from the U.S. Fish and Wildlife Service dated July 20, 2016. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996.

b. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular the Puget Sound chinook salmon and Puget Sound steelhead. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion with non-discretionary "incidental take" provisions with which you must comply). The Biological Opinions prepared by the National Marine Fisheries Service

(NMFS) for Washington State Habitat Restoration Program (NMFS #2006/05601 and 2007/09077) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified “incidental take” in the Biological Opinions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the Biological Opinions. These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with ESA.

c. In order to meet the requirements of the Endangered Species Act and protect Puget Sound Chinook, Puget Sound steelhead, and coastal-Puget Sound bull trout, the permittee may conduct the authorized activities from August 1st through August 29th in any year this permit is valid. **The permittee shall not conduct work authorized by this permit from August 30th through July 31st in any year this permit is valid.**

To satisfy the provisions of the 2008 Fish Passage and Restoration programmatic consultation in accordance with Special Condition “a” above, please be reminded that you must provide the following information upon completion of your project:

1. Project completion date.
2. Fish capture and release report for projects requiring dewatering. (For additional details, see Appendix A “Dewatering and Fish Capture Protocol” in the Specific Project Information Form you submitted).
3. Sediment monitoring report for projects requiring in-water work, including the extent and duration of downstream turbidity impacts measured every 20 minutes during construction. (For additional details, see question I.R. of the Specific Project Information Form you submitted).
4. Turbidity reporting specifically identified in the U.S. Fish and Wildlife Service’s electronic approval of the project.

Submit the information to the Corps at the above address and to the U.S. Fish and Wildlife Service at the address contained in their July 20, 2016 approval.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please note that Seattle District NWP Regional General Condition 6, Cultural Resources and Human Burials, found in the *Nationwide Permit Terms and Conditions* enclosure, details procedures that must be followed should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification and the Coastal Zone Management Act requirements for this NWP. No further coordination with Ecology is required.

In the project area, we have determined that the Middle Fork Nooksack River is a water of the United States. We have completed an approved jurisdictional determination for your project area dated June 7, 2014, which can be found on our website at: www.nws.usace.army.mil select Regulatory/Permits and then "Jurisdictional Determinations". If you object to this determination, you may request an administrative appeal under our regulations (33 CFR, Part 331) as described in the enclosed *Appeal Process Fact Sheet* and the *Notification of Administrative Appeal Options and Process and Request for Appeal* form (*Appeal Form for Approved Jurisdictional Determinations*).

Our verification of this NWP authorization is valid until March 18, 2017 unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2017, you will have until March 18, 2018 to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all State and local permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit* form. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey form. This form and information about our program is available on our website at www.nws.usace.army.mil (select "Regulatory/Permits" and then "Forms").

A copy of this letter with enclosures will be furnished to Ms. Jill Komoto of your office. If you have any questions, please contact me at (360) 734-3156 or via email at randel.j.perry@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Randel J. Perry". The signature is written in a cursive, somewhat stylized font.

Randel Perry, Project Manager
Regulatory Branch

Enclosures